

INTEGRITY OF ELECTION RESULTS**AMENDMENTS**

2005 FIRST SPECIAL SESSION

STATE OF UTAH

Sponsor: John Dougall

LONG TITLE**General Description:**

This bill amends election law and the duties of the chief election officer to require that voting equipment produces an auditable record of votes cast.

Highlighted Provisions:

This bill:

- ▶ amends the Election Code and the duties of the chief election officer to require that any voting equipment purchased be capable of producing an auditable, voter verified paper trail of votes cast;

- ▶ amends the Election Code to require the lieutenant governor to establish a Voting Equipment Selection Committee to provide recommendations and information on new voting equipment systems before new voting systems are purchased;

- ▶ amends the Election Code to establish membership and reimbursement requirements for the Voting Equipment Selection Committee;

- ▶ amends the Election Code to require the lieutenant governor to provide the public with an opportunity to review and comment on new voting equipment systems before new voting equipment systems are purchased; and

- ▶ amends the Election Code to require that any automatic voting equipment will permit each voter to verify and correct the voter's selections before the ballot is cast.

Monies Appropriated in this Bill:

None



Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

20A-5-302, as last amended by Chapter 113, Laws of Utah 2002

67-1a-2, as last amended by Chapters 133 and 176, Laws of Utah 2002

ENACTS:

20A-5-402.7, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **20A-5-302** is amended to read:

20A-5-302. Automated voting system.

(1) Any county or municipal legislative body or special district board may:

(a) adopt, experiment with, acquire by purchase, lease, or otherwise, or abandon any automated voting system that meets the requirements of this section; and

(b) use that system in any election, in all or a part of the voting precincts within its boundaries, or in combination with paper ballots.

(2) (a) Each automated voting system shall:

(i) provide for voting in secrecy, except in the case of voters who have received assistance as authorized by Section 20A-3-108;

(ii) permit each voter at any election to:

(A) vote for all persons and offices for whom and for which that voter is lawfully entitled to vote;

(B) vote for as many persons for an office as that voter is entitled to vote; and

(C) vote for or against any ballot proposition upon which that voter is entitled to vote;

(iii) permit each voter, at presidential elections, by one mark or punch to vote for the candidates of that party for president, vice president, and for their presidential electors;

(iv) permit each voter, at any regular general election, to vote for all the candidates of one registered political party by making one mark or punch;

(v) permit each voter to scratch vote;

(vi) at elections other than primary elections, permit each voter to vote for the

nominees of one or more parties and for independent candidates;

(vii) at primary elections:

(A) permit each voter to vote for candidates of the political party of his choice; and

(B) reject any votes cast for candidates of another party;

(viii) prevent the voter from voting for the same person more than once for the same office;

(ix) provide the opportunity for each voter to change the ballot and to correct any error before the voter casts the ballot in compliance with the Help America Vote Act of 2002, Pub. L. No. 107-252;

[(ix)] (x) include automatic tabulating equipment that rejects choices recorded on a voter's ballot if the number of the voter's recorded choices is greater than the number which the voter is entitled to vote for the office or on the measure;

[(x)] (xi) be of durable construction, suitably designed so that it may be used safely, efficiently, and accurately in the conduct of elections and counting ballots;

[(xi)] (xii) when properly operated, record correctly and count accurately each vote cast; [and]

(xiii) for voting equipment certified after January 1, 2005, produce a permanent paper record that:

(A) shall be available as an official record for any recount conducted with respect to an election where the voting equipment is used;

(B) (I) shall be available for the voter's inspection prior to the voter leaving the polling place; and

(II) shall permit the voter to inspect the record of the voter's selections independently only if reasonably practicable commercial methods permitting independent inspection are available at the time of certification of the voting equipment by the lieutenant governor;

(C) shall include, at a minimum, human readable printing that shows a record of the voter's selections;

(D) may also include machine readable printing which may be the same as the human readable printing; and

(E) allows voting poll watchers and counting poll watchers to observe the election process to ensure its integrity; and

90 ~~[(xii)]~~ (xiv) meet the requirements of Section 20A-5-402.5.

91 (b) If the permanent paper record contains a conflict or inconsistency between the
92 human readable printing and the machine readable printing, the human readable printing shall
93 supercede the machine readable printing when determining the intent of the voter.

94 ~~[(b)]~~ (c) Notwithstanding any other provisions of this section, the election officers shall
95 ensure that the ballots to be counted by means of electronic or electromechanical devices are of
96 a size, layout, texture, and printed in a type of ink or combination of inks that will be suitable
97 for use in the counting devices in which they are intended to be placed.

98 Section 2. Section **20A-5-402.7** is enacted to read:

99 **20A-5-402.7. Voting Equipment Selection Committee.**

100 (1) As used in this section, "new voting equipment system" means voting equipment
101 that is operated in a materially different way or that functions in a materially different way than
102 the equipment being replaced.

103 (2) Before selecting or purchasing a new voting equipment system after January 1,
104 2007, the lieutenant governor shall:

105 (a) appoint a Voting Equipment Selection Committee; and

106 (b) ensure that the committee includes persons having experience in:

107 (i) election procedures and administration;

108 (ii) computer technology;

109 (iii) data security;

110 (iv) auditing; and

111 (v) access for persons with disabilities.

112 (3) (a) (i) A member of the committee who is not a government employee shall receive
113 no compensation or benefits for the member's services, but may receive per diem and expenses
114 incurred in the performance of the member's official duties at the rates established by the
115 Division of Finance under Sections 63A-3-106 and 63A-3-107.

116 (ii) A member may decline to receive per diem and expenses for the member's services.

117 (b) (i) A state government officer or employee member who does not receive salary,
118 per diem, or expenses from the member's agency for the member's service may receive per
119 diem and expenses incurred in the performance of the member's official duties at the rates
120 established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A state government officer or employee member may decline to receive per diem for the member's service.

(4) The lieutenant governor shall select a chair from the committee membership.

(5) The lieutenant governor may fill any vacancies that occur on the committee.

(6) The lieutenant governor's office shall provide staffing for the committee.

(7) The Voting Equipment Selection Committee shall:

(a) evaluate new voting equipment systems proposed for purchase by the state; and

(b) provide information and recommendations to assist the lieutenant governor with the purchase of new voting equipment systems.

(8) The lieutenant governor may designate individuals, including committee members, to inspect and review proprietary software as part of an evaluation of new voting equipment systems under consideration for purchase.

(9) Before making any selection or purchase, the lieutenant governor shall provide for a period of public review and comment on new voting equipment systems under consideration for purchase by the state.

Section 3. Section **67-1a-2** is amended to read:

67-1a-2. Duties enumerated.

(1) The lieutenant governor shall:

(a) perform duties delegated by the governor, including assignments to serve in any of the following capacities:

(i) as the head of any one department, if so qualified, with the consent of the Senate, and, upon appointment at the pleasure of the governor and without additional compensation;

(ii) as the chairperson of any cabinet group organized by the governor or authorized by law for the purpose of advising the governor or coordinating intergovernmental or interdepartmental policies or programs;

(iii) as liaison between the governor and the state Legislature to coordinate and facilitate the governor's programs and budget requests;

(iv) as liaison between the governor and other officials of local, state, federal, and international governments or any other political entities to coordinate, facilitate, and protect the interests of the state;

(v) as personal advisor to the governor, including advice on policies, programs,

administrative and personnel matters, and fiscal or budgetary matters; and

(vi) as chairperson or member of any temporary or permanent boards, councils, commissions, committees, task forces, or other group appointed by the governor;

(b) serve on all boards and commissions in lieu of the governor, whenever so designated by the governor;

(c) serve as the chief election officer of the state as required by Subsection (2);

(d) keep custody of the Great Seal of Utah;

(e) keep a register of, and attest, the official acts of the governor;

(f) affix the Great Seal, with an attestation, to all official documents and instruments to which the official signature of the governor is required; and

(g) furnish a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in the office of the lieutenant governor to any person who requests it and pays the fee.

(2) (a) As the chief election officer, the lieutenant governor shall:

(i) exercise general supervisory authority over all elections;

(ii) exercise direct authority over the conduct of elections for federal, state, and multicounty officers and statewide or multicounty ballot propositions and any recounts involving those races;

(iii) assist county clerks in unifying the election ballot;

(iv) prepare election information for the public and make that information available to the news media;

(v) receive and answer election questions and maintain an election file on opinions received from the attorney general;

(vi) maintain election returns and statistics;

(vii) certify to the governor the names of those persons who have received the highest number of votes for any office; ~~and~~

(viii) ensure that all voting equipment purchased by the state complies with the requirements of Subsection 20A-5-302(2) and Sections 20A-5-402.5 and 20A-5-402.7; and

~~[(viii)]~~ (ix) perform other election duties as provided in Title 20A, Election Code.

(b) As chief election officer, the lieutenant governor may not assume the responsibilities assigned to the county clerks, city recorders, town clerks, or other local election

183 officials by Title 20A, Election Code.

184 Section 4. **Effective date.**

185 If approved by two-thirds of all the members elected to each house, this bill takes effect
186 upon approval by the governor, or the day following the constitutional time limit of Utah
187 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
188 the date of veto override.

Legislative Review Note

as of 4-14-05 8:28 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel